

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>INVESTORS CAPITAL CORP.; and</b>	)	
<b>OKE ANANABA,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:06-cv-0382-ID-SRW</b>
	)	
<b>DUNCAN-WILLIAMS, INC.;</b>	)	
<b>E-D CAPITAL, INC.; et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**MOTION TO REMAND**

COME NOW the Plaintiffs, pursuant to 28 U.S.C. §1447(c), and hereby respectfully request this Honorable Court to remand this matter back to the Circuit Court of Barbour County, Alabama, Eufaula Division, where it was pending prior to removal by the Defendants on or about April 26, 2006. As grounds therefor, the Plaintiffs show unto this Court the following:

1. This action originated in the Circuit Court of Barbour County, Alabama, Eufaula Division, on or about March 21, 2006, when the Plaintiffs filed their complaint against the above-named Defendants.

2. On or about April 26, 2006, the Defendants filed a Notice of Removal to this Court.

3. The Plaintiffs are timely filing this Motion for Remand and are simultaneously filing their Brief in Support.

4. The Plaintiffs adopt and incorporate herein all the documents attached as Exhibits "A", "B" and "C" to the Defendants' Notice of Removal, as well as Exhibits

“D” and “E” to this Motion, being the affidavits of Ronnie Weeks and Jeff Wheatley, respectively.

5. The Defendants have not met their burden of proof by a preponderance of the evidence that the amount in controversy exceeds this Court’s jurisdictional limit of \$75,000.

6. Plaintiff Oke Ananaba has stated viable and colorable causes of action against the Defendants from which he will and should obtain and collect a judgment; hence, contrary to Defendants’ hollow assertions, Ananaba has not been made a party to this lawsuit fraudulently.

7. Ananaba was a foreseeable, if not intended, recipient of the fraudulent promises made by the Defendants to Plaintiff, Investors Capital Corporation. Accordingly, Ananaba has alleged a viable cause of action for promissory fraud against the Defendants.

8. Because Ananaba was a reasonably foreseeable victim of Defendants’ fraudulent conduct, it stands to reason that the Defendants’ owed him a duty of reasonable care such that he not be damaged by Defendants’ negligent, wanton and/or willful conduct. Accordingly, Ananaba has alleged a viable cause of action for negligence, wantonness and/or willfulness against the Defendants.

9. Because of the viability of the underlying torts of promissory fraud and negligence, wantonness and/or willfulness, Ananaba has stated a viable cause of action for conspiracy against the Defendants.

10. Defendants' Notice of Removal is ill-conceived and done solely for the purposes of delay and/or harassment. Accordingly, Plaintiffs request reasonable attorney fees under 28 U.S.C. §1447(c) in the event this Court orders remand of this case.

WHEREFORE, Plaintiffs respectfully request that upon oral argument this Court remand this matter back to the Circuit Court of Barbour County, Alabama, Eufaula Division and grant to them reasonable attorney's fees as allowed under 28 U.S.C. §1447(c)

ORAL ARGUMENT REQUESTED.

Respectfully Submitted this the 24th day of May, 2006.

MORRIS, CARY, ANDREWS,  
TALMADGE, JONES & DRIGGERS, LLC

/s/ M. Adam Jones  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have, on May 24, 2006, served a copy of the foregoing pleading electronically via CM/ECF, and will send notification of such filing to:

Hon. Luther M. Dorr, Jr.  
Hon. John N. Bolus  
Hon. Melinda J. Lucas  
MAYNARD, COOPER & GALE, P.C.  
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/s/ M. Adam Jones